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SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 553

PEOPLE OF THE STATE OF MICHIGAN, ex rel GEORGE H. WINKLE,

Petitioner-Appellant,

vs.

WILLIAM H. BANNAN, Warden of the State Prison of Southern Michigan, Jackson, Michigan,

Respondent-Appellee.

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS

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Pursuant to Rule 16, paragraph 1 (b) of the Revised Rules of this court, respondent-appellee, William H. Bannan, moves that the appeal be dismissed.

STATEMENT

[The appellant has referred to the Joint Appendix in his jurisdictional statement. We are making references to the same Joint Appendix. We have extracted and are attaching as an Appendix hereto the pages of

the Joint Appendix to which we are making reference. The original pagination of the Joint Appendix is kept. Pages 6a and 7a are from the excerpts of the testimony in the Justice Court examination. The other pages are from the testimony taken in Circuit Court. The reference in parentheses are to these pages in the Joint Appendix].

This is an appeal from the decision of the Supreme Court of Michigan in the case of *In re Winkle*, 372 Mich 292.

Mr. Winkle was convicted in the Lenawee Circuit Court on two counts: (1) carrying concealed weapons; and (2) possession of burglar tools. On appeal to the Supreme Court the convictions were affirmed (358 Mich 551).

Subsequently thereto, a petition for habeas corpus was filed in the Supreme Court of Michigan and denied. A petition for certiorari was filed with the Supreme Court of the United States and given Miscellaneous Docket No. 93. On November 6, 1961 an order was entered as follows:

> "The motion for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment is vacated and, as suggested by the Attorney General of Michigan, the case is remanded for consideration in light of Mapp v. Ohio, 367 US 643."

The case was briefed, argued and decided by the Michigan Supreme Court, being reported in 372 Mich 292. The Michigan Supreme Court determined that on the facts presented by the record the search was reasonable. While the members of the court gave different reasons for arriving at this result, all of the participating judges agreed with that conclusion. This appeal followed. The facts supporting

the conclusion of the Michigan Supreme Court were stated by the court as follows:

"The following facts are undisputed by both petitioner and respondent, and are accordingly adopted:

"'On July 21, 1957, at approximately 2 a.m., petitioner George H. Winkle (hereinafter called Winkle), accompanied by Lee Casteel, was traveling west on US-223, south of the city of Adrian, Michigan. As they approached the intersection of US-223 and M-52, the traffic light regulating the intersection turned amber, Winkle came to a stop on the corner of US-223 and M-52. Winkle waited for the traffic to clear on M-52, the north and south roadway, and then before the traffic light turned green, made a left-hand turn onto M-52 and proceeded south for approximately 100 feet and made another left-hand turn into the driveway of the Rock Inn Motel.

"'Winkle had a few minutes prior, caused a telephone call to be made to the Rock Inn Motel to determine the availability of accommodations on the particular night. As the Winkle car proceeded up the drive of the Rock Inn Motel they were approached from behind by a Michigan State police patrol car carrying 2 Michigan state troopers. The officers honked their horn twice as they approached the Winkle car and the Winkle car came to a stop, in the driveway, 20 feet east of the office of the Rock Inn Motel. Mr. Winkle got out of his car and proceeded to walk towards the Michigan State police car. The driver of the State police car, Trooper Robert Golm, walked towards the Winkle car and met Winkle somewhere in the vicinity of the rear bumper of the Winkle car.

"'Trooper Golm requested Winkle's driver's license, and informed Winkle that they were stopping his car for disobeying the red light. Winkle displayed to Trooper Golm a driver's license bearing the name of George Henry Winkle. He also displayed a certificate of registration for the automobile which he was driving, in the name of Henry Williams. Winkle explained the car was his brother-in-law's. Therefore the name on the registration was different than on his driving license. Trooper Golm also requested information from Winkle as to his destination. While this conversation was occurring between Trooper Golm and Winkle, the other trooper, Anthony Pandol, was talking to Lee Casteel, the other occupant of the car. The troopers then switched, Trooper Golm going over to talk to Casteel and Trooper Pandol going over to talk to Winkle.

"'Shortly after this, Trooper Golm returned and talked with Winkle and had by this time been given conflicting statements as to destination, purposes, et cetera.'"

The driver's license which was displayed was one issued by the State of Florida (21a). The conflicting statement as to destination, purposes, et cetera, referred to in the last paragraph of the above quotation, is set forth below with appropriate references to the testimony.

Winkle	Philbrick alias Casteel (7a)
1. "[H]e was going to Detroit and planned on doing some fishing up around Pontiac and Oakland County." (23a) also (6a9)	1. "[He] was on the way down to Toledo to see some girls." (7a).
2. "Asked him for how long he was going, and he said two or three weeks. He said he didn't have to be back any special time." (23a); also (6a).	2. "I asked him if he was working. He said yes, he was a radio technician. And I asked him when he had to be back to work. If he had to be back to work Monday morning. • • • He said yes, he had to go back to work Monday morning" (7a).
3. "He was living in a motel around Indianapolis. (24a); also (7a).	3. "[H]e was living with this George Winkle, his partner there, and they were living in an apartment house on Central Street." (7a).

ARGUMENT

THE APPEAL SHOULD BE DISMISSED BECAUSE NO SUBSTANTIAL FEDERAL QUESTION IS INVOLVED.

The Fourteenth Amendment question of the validity of the proviso of the Michigan Constitution, which is italicized in the quotation commencing on page 15 of the appellant's jurisdictional statement, is not involved because the search

of appellant's automobile was reasonable and the evidence found as a result of the search was therefore properly allowed in evidence without reliance upon the provisions of this portion of the Michigan Constitution.

There was nothing unreasonable about the officers questioning the appellant and his companion after they were stopped for running through a red light.

People v. Simon, 45 Cal (2d) 645;

People v. Blodgett, 46 Cal (2d) 114.

During the lawful questioning of the appellant and his companion, the officers discovered certain pertinent facts which they had within their knowledge at the time they made the search. The facts found by the court and relied upon are stated in Mr. Justice Kelly's opinion in *Re Winkle*, 372 Mich 292, at page 302, as follows:

> "The following facts and circumstances were well known to the arresting officers: (1) It was 2 a.m. Sunday; (2) The automobile was legally stopped; (3) The car was not registered in the name of either occupant; (4) There was an open bottle of vodka on the front seat of the automobile; (5) The men were from Indiana and the driver displayed a Florida driver's license; (6) The occupants told the troopers completely and radically conflicting stories as to their places of residence, their destination, the purpose of their trip, and the length of their intended stay.
>
> "The facts and conflicting statements of petitioner and his associate were completely inconsistent and irreconcilable with those of innocent travelers on the highway."

This statement was concurred in by three of the other participating justices, namely, Justices O'Hara, Dethmers and Black. It also had the approval of the remaining three participating Justices. Mr. Justice Souris in his opinion stated (page 327):

> "At the time the search commenced, from their interrogation of defendant and his companion the troopers had probable cause to believe (whether they actually did so believe is beside the point in determining the reasonableness of the search and seizure) that the automobile had been stolen. They then knew that the automobile was not owned by either occupant; that, although defendant claimed to be a resident of Indiana, he carried a Florida driver's license; and that, because of the conflicting stories the occupants of the car told the trooper, either or both occupants had lied about their residences and their destinations. Considering also the fact that the troopers' encounter with defendant and his companion occurred at 2 o'clock in the morning and that their interest was aroused initially by the defendant's haste in making a turn in violation of a traffic control signal, I cannot conceive, any more than can Justice Kelly, what justification there could have been had the troopers failed to make a search such as they did make."

In *People v. Simon*, 45 Cal (2d) 645, it was said (page 648):

> "Thus, if the officer is entitled to make an arrest on the basis of information available to him before he searches, and as an incident to that arrest is entitled to make a reasonable search of the person arrested and the place where he is arrested, there is nothing un-

reasonable in his conduct if he makes the search before instead of after the arrest. In fact, if the person searched is innocent and the search convinces the officer that his reasonable belief to the contrary is erroneous, it is to the advantage of the person searched not to be arrested. On the other hand, if he is not innocent or the search does not establish his innocence, the security of his person, house, papers, or effects suffers no more from a search preceding his arrest than it would from the same search following it. In either case the important considerations are whether the officer had reasonable cause before the search to make an arrest and whether the search and any seizures incident thereto were or were not more extensive than would reasonably be justified as incident to an arrest. (See *United States v. Rabinowitz*, 339 US 56, 60-64 [70 S Ct 430, 94 L ed 653]). We conclude, therefore, that a search is not unlawful merely because it precedes rather than follows the arrest."

This is also the Michigan rule. In *People v. Gonzales*, 356 Mich 247, the court said (page 253):

"This does not, however, answer all our problems. A lawful arrest is not a necessary condition precedent to a lawful search and seizure without warrant. Facts which indicate probable cause to believe a felony is being committed have many times been held to render 'reasonable' within constitutional terms a search and seizure without warrant. *People v. Licavoli*, 245 Mich 202; *People v. Miller*, 245 Mich 115; *People v. Orlando*, 305 Mich 686; *Scher v. United States*, 305 US 251 (59 S Ct 174, 83 L ed 151); CL 1948, § 764.15 (Stat Ann 1954 Rev § 28.874)."

To the same effect see:

Carroll v. United States, 267 US 132;
Brinegar v. United States, 338 US 160.

The finding of the Michigan Supreme Court in *Re Winkle*, 372 Mich 292, that the search was reasonable, is in accordance with the decisions in other jurisdictions which have had occasion to pass upon searches under facts similar to those presented here.

Thus in *Christensen v. United States* (D.C.), 259 F (2d) 192, the court said (page 193):

> "In determining whether there was probable cause for the arrest, we must view the situation as it appeared to 'the eyes of a reasonable, cautious and prudent peace officer under the circumstances of the moment.' • • • Neither one standing alone[1] would constitute probable cause, but together they composed a picture meaningful to a trained, experienced observer."

In *People v. Watkins*, 19 Ill (2d) 11, the court said (page 19):

> "A search that was made here can be justified, however, without relying solely upon the traffic violation.[2]

---

[1]
A tip from an unidentified informant telling where defendant could be found selling drugs; defendant going from place to place in the restaurant fixed by the tipster engaging persons in whispered conversations; shortly thereafter defendant was seen to carry a small brown paper bag through restaurant and set it down while he put on his coat and he was arrested before he picked the bag up again.

[2]
Illinois is one of the states where traffic violation alone will not justify a search.

> The arresting officers were members of the gambling detail. They knew the defendant and he knew them, because they had arrested him on previous occasions. They watched him park his car and saw him go into the building. He saw them at that time. He emerged twenty minutes later, but ran back into the building as soon as he saw that the officers were still there. Police officers often must act upon a quick appraisal of the data before them, and the reasonableness of their conduct must be judged on the basis of their responsibility to prevent crime and to catch criminals. With this in mind, we think that the circumstances made it reasonable for the arresting officers to assume that they were dealing with a situation more serious than a routine parking violation. The search of defendant's person after his arrest did not, therefore, violate his constitutional right against unreasonable search and seizure, and the policy tickets obtained by the search were properly admitted in evidence."

The United States Court of Appeals for the Fifth Circuit approved the opinion of the United States District Court as follows:

> "In addition, I think the officers had reasonable grounds to believe that a customs offense was being committed even though the checking point was, of necessity, somewhat removed from the border. Defendants were nervous and evasive; they were reluctant to have the trunk of the automobile opened at all. While the result of the search cannot justify an arrest, the search here, in my opinion, was not unreasonable. Cf *Flores v. United States*, 5 Cir., 234 F 2d 604; *Haerr v. United States*, 240 F 2d 533." *Ramirez v. United States*, 263 F (2d) 385.

In *People v. Blodgett*, 46 Cal (2d) 114, it was said:

> "Although the cab driver could have been arrested for double parking, the search of his cab cannot be justified on that ground, for it had no relation to the traffic violation and would not have been incidental to an arrest therefor. * * *. It was justified, however, on another ground. There is nothing unreasonable in an officer's questioning persons outdoors at night. * * *, and in view of the hour and the unusual conduct of the occupants of the cab it was not unreasonable for the officers to order them to get out of the cab for questioning. Since Officer Barker saw defendant's furtive action in getting out, he had reasonable grounds to believe that he was hiding contraband and the search of the cab was therefore reasonable."[3]

---

[3] The facts in the Blodgett case are recited by the court as follows:

"At approximately 3 a.m. the following morning Mrs. Grundy and Sanders were together at the Willow Hotel. Sanders left to get a cab, found one at a taxi stand a block away, got in the front seat and asked the driver to drive to the hotel. The cab double parked in front of the hotel and Sanders went in. Shortly thereafter Mrs. Grundy came out of the hotel, got in the cab, and sat on the right side of the rear seat. At about the same time defendant approached the cab and told the driver that he wished to go to 12th and Broadway. The driver told him that if his other fare was going in the same direction, he could go along. Defendant then entered the cab and sat on the left side of the rear seat. In the meantime, Officers Barker and Tarabochia of the Oakland Police Department had been observing the cab as it stood in front of the hotel and decided to investigate it. They approached and ordered the occupants to get out. As Officer Barker opened the left rear door he saw defendant withdraw his left hand from behind the seat at the juncture of the seat and back cushion. After defendant and Mrs. Grundy got out, the officer removed the rear seat and found three marijuana cigarettes where defendant had withdrawn his hand.

CONCLUSION

We urge that the search was justified, being based upon a probable cause to believe that a crime was being committed or had been committed and that, in fact, the officers would have been derelict in their duty to the people of the State of Michigan had the search not been made. The motion to dismiss for lack of a substantial question should be granted. Should the proceeding taken be treated as a petition for certiorari, as is suggested by the appellant, the petition should be denied for the same reason.

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APPENDIX

(The pages in this Appendix are 6a, 7a, 21a, 23a and 24a. These are the numbers these pages bore in the joint appendix which has been referred to by petitioner in his brief. It is thought that keeping this pagination might help the court.)

him for running the red light there and asked him where he had been coming from and where he was going.

At that time he told me he was coming from Indianapolis, Indiana, and was heading for Adrian. We asked him for the registration of his car and he gave us the registration in the name of George Williams. And he mentioned this as being his brother-in-law and he had borrowed the car from him.

Asked him where he was going, what he was planning on doing in Michigan. He said he was on a two or three weeks vacation and planned on doing some fishing up around Detroit and Pontiac.

Q. You say a two or three weeks vacation?

A. Two or three weeks.

Q. Did he say two or three weeks? Is that what he said to you, "Two or three weeks."

(9e) A. Yes, he said he was going on vacation for two or three weeks fishing trip.

Q. A fishing trip?

A. Yes.

Q. Did he say where he was going in Michigan?

A. He said he planned on going around Detroit and then going up around Pontiac in Oakland County, he said.

Q. All right, go ahead. What then?

A. Well, then, meanwhile my partner Pandol, Tony Pandol, he went up. He was talking to the passenger of the car, and had got out of the car. And then Tony walked on back to the rear of the car and I walked up and talked to the passenger.

I want to go back a little ways. When we first stopped the man, I was first talking to him, asked what his partner's name was. He said his name was Philbrick, was his name.

I went up there and talked to Mr. Philbrick and I asked him where he was coming from. He said he was coming from Indianapolis. And asked him where he was going. He said he was on the way down to Toledo to see some girls.

I asked him if he was working. He said yes, he was a radio technician. And I asked him when he had to be back to work. If he had to be back to work Monday morning. (10e) He said yes, he had to be back to work Monday morning. He said he was self employed.

And then I asked him where he had been living and he said he was living with this George Winkle, his partner there, and they were living in an apartment house on Central Street.

I think I asked him—I asked George Winkle first when I talked to him, I asked him where he had been living. He said he was living in a motel around Indianapolis, and asked him where his friend was living. He said he was living with relatives in the apartment up on Central Street.

Then I walked back to the rear of the car and I had this Norman Philbrick stand out to the right of his car, the car he was traveling in.

Q. Let me straighten this out just a minute, Trooper Golm. You refer to a Norman Philbrick. Who is Norman Philbrick as far as the name we have given these two respondents?

A. The one identified as Casteel.

• • • •

(29e) *Cross Examination*

By Mr. Tucker:

Q. What's your rank, officer?

A. Trooper.

A. George.

Q. From there give them to me. I will have them properly marked and we will look them over some more. Try to (14) find the registration.

A. Here is the registration, name of George Williams, and here is the license.

(Paper marked Exhibit Number 1.)

Q. Showing you People Exhibit 1 for identification, is that the item that you have already identified as the registration that he showed you in the name of George C. Williams? (Handing Exhibit to the witness.)

A. Yes.

Q. Now, do you know which of those he showed you?

A. This license here, Florida license, in the name of George Henry Winkle.

(Paper marked Exhibit Number 2.)

Q. Showing you People's Exhibit 2 for identification, I ask you if that's the driver's license that you just identified? (Handing Exhibit to the witness.)

A. Yes.

Mr. Glaser: I am going to ask that Exhibits 1 and 2 be received at this time.

The Court: Any objection to these two exhibits?

Mr. Tucker: No objection.

The Court: Exhibits 1 and 2 will be received.

Q. Now, these two referring to Scott and Philbrick, those are not concerned with Mr. Winkle?

(15) A. That's correct.

Mr. Glaser: I have to ask a question for my own information before I have these marked, your Honor.

Q. (Continuing): This refers to Mr. Winkle?

A. Yes, he didn't show us that. We didn't see it until after we got down to the jail.

(Papers marked Exhibits 3 and 4, inclusive.)

Q. All right, now he showed you this registration, which is Exhibit 1, in the name of George C. Williams. is that correct?

A. That's correct.

Q. What you testified to, I believe, the Florida operator's license in the name of Mr. C. Winkle. Is that correct?

A. George Henry Winkle.

Q. All right. Now, what happened then? What was the conversation at that point?

A. I asked him where he was heading for and he said he was (17) going to Detroit and planned on doing some fishing up around Pontiac and Oakland County.

Asked him for how long he was going, and he said two or three weeks. He said he didn't have to be back any special time.

Asked him what his occupation was. Said he was a bartender. And I asked him what his friend's name was. He said his name was Norman Philbrick.

Q. Now, was there any conversation concerning why you had stopped him, anything of that kind?

A. Yes, I advised him just after I asked for his operator's license, why I stopped him. I told him I stopped him for disobeying the red light.

Q. Was that before this conversation concerning the fishing expedition?

A. Yes.

Q. And he stated to you then he was here fishing. Is that generally right?

A. That's correct.

Q. All right, then what happened?

A. Then I walked over and talked to his friend, Norman Philbrick, which my partner had been talking to prior to this time, and my partner came back and talked to Mr. Winkle. I asked Mr. Philbrick where he was headed.

Mr. Hammond: Now, just a minute. I want to (18) object to this testimony, any testimony that he had with Mr. Philbrick, unless it was in the presence of Mr. Winkle and heard by him.

The Court: I think the objection is good.

Mr. Glaser: We are not, of course.

Q. (Continuing): Mr. Philbrick not being here—Mr. Casteel—we can't talk about what conversation you may have had with him out of the presence of Mr. Winkle at this time.

All right, after you talked with Mr. Casteel, as you testified, then what happened?

A. Then I came back and talked to Mr. Winkle again.

Q. All right, what was that conversation?

A. I asked him where he was living in Indianapolis, and he told me he was living in a motel, he was living in motels around Indianapolis.

And while I was talking to Mr. Winkle this time my partner walked up and retrieved the keys from the inside of the car and walked back and opened the trunk, while I was conversing with Mr. Winkle.

Q. All right, did you hear your partner ask anyone whether he could take those keys out of the car?

A. No.

Q. Was this car still standing where it had originally stopped, as you testified?

(19) A. Yes.

Q. That was in the center, I believe you said, in the traveled portion of the drive, where the cars drive back and forth?

A. Yes.

Q. He retrieved the keys from the car at this time, you said?

A. Yes.